

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Date:  
July 13, 2010

Fund =

Trust =

State =

Country =

Type X =

Company =

Date 1 =

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Dear :

This responds to your letter dated March 16, 2010, submitted by your authorized representative on behalf of the Fund. The Fund requests that the Internal Revenue Service rule that subpart F income of a controlled foreign corporation subsidiary attributable to the Fund is income derived with respect to the Fund's business of investing in the stock of such subsidiary and thus constitutes qualifying income to the Fund under § 851(b)(2) of the Internal Revenue Code of 1986, as amended (the Code).

**Facts:**

The Fund is a series of Trust, which is a statutory trust organized under the laws of State. Trust is an open-end management investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act). The Fund uses an accrual method of accounting and intends to adopt an annual accounting period based on its fiscal year ending Date 1. The Fund will file an election to be a regulated investment company (RIC) under § 851 of the Code and intends each year to meet the diversification requirements set forth in § 851(b)(3) and the distribution requirements set forth in § 852(a).

The Fund has a subsidiary (the “Subsidiary”) organized as a Type X Company under the laws of Country. Under the laws of Country, a Type X Company provides limited liability for all of its shareholders. The Subsidiary will file an election on Form 8832, Entity Classification Election, to ensure that it is treated as a corporation for federal income tax purposes.

The Fund represents that, although the Subsidiary will not be registered as an investment company under the 1940 Act, it will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related SEC guidance pertaining to asset coverage with respect to transactions in commodity futures and other transactions in derivatives.

The Fund intends to invest a portion of its assets in the Subsidiary, subject to the limitations set forth in § 851(b)(3) of the Code. The Subsidiary expects to invest in various investments linked to the performance of commodities or commodities indexes, which may include commodity and financial futures and option contracts, deliverable forward contracts and cash-settled non-deliverable forward contracts, commodity-linked notes, and swaps on commodities or commodities indexes. The Subsidiary also may invest in commodities directly and in various other leveraged and non-leveraged commodity-related investments. The Subsidiary may also hold from time to time other stock, securities, debt and cash (as collateral for leveraged commodity related investments or as independent investments).

The Fund owns a percent of the shares of the Subsidiary and no transaction is currently contemplated that would result in the Fund owning less than a percent of the shares of the Subsidiary. In all events the Fund expects that, at all relevant times, (i) it will own at least 10 percent of the total combined voting power of all classes of stock of the Subsidiary entitled to vote, and (ii) “United States Shareholders” within the meaning of § 951(b) will own more than 50 percent of the combined voting power of all classes of the Subsidiary’s shares entitled to vote and/or of the total value of the Subsidiary’s shares.

## **Law and Analysis:**

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test. Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Under § 851(b)(2), a corporation's qualifying income includes –

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of [the 1940 Act]) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies . . . .

Section 2(a)(36) of the 1940 Act defines the term “security” as –

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

In addition, the flush language of § 851(b) of the Code provides that, for purposes of § 851(b)(2), there shall be treated as dividends amounts included in gross income under §§ 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under §§ 959(a)(1) or 1293(c) (as the case may be), there are distributions out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a controlled foreign corporation (CFC) as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in § 951(b) as a United States person who owns 10 percent or more of the total combined voting power of all classes of voting stock of a foreign corporation. The Fund is a United States person. The Fund represents that it owns a percent of the voting power and the value of the stock of the Subsidiary. The

Fund represents that the Subsidiary therefore qualifies as a CFC under these provisions.

Section 951(a)(1) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of the corporation and who owns stock in the corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952 of the Code defines subpart F income to include foreign base company income determined under § 954. Under § 954(a)(1), foreign base company income includes foreign personal holding company income determined under § 954(c). Section 954(c)(1) defines foreign personal holding company income to include: dividends, interest, royalties, rents, and annuities; gains in excess of losses from transactions in commodities (including futures, forward, and similar transactions but excluding certain hedging transactions and certain active business gains and losses); and, subject to certain exceptions, net income from notional principal contracts.

The Subsidiary's income from its investments in commodities and commodity-linked instruments may generate subpart F income. The Fund will therefore be required to include in its income its pro rata share of the Subsidiary's subpart F income for each taxable year in accordance with § 951.

**Conclusion:**

Based on the facts as represented, we rule that subpart F income of the Subsidiary attributable to the Fund is income derived with respect to the Fund's business of investing in the stock of the Subsidiary and thus constitutes qualifying income under § 851(b)(2) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether the Fund qualifies as a RIC under subchapter M of the Code.

This ruling is directed only to the taxpayer who requested it, and is limited to the facts as represented by the taxpayer. Section 6110(k)(3) of the Code provides that this letter may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David B. Silber  
David B. Silber  
Chief, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)